IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10350 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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KESHAVNARAYAN COOP. HOUSING SOCIETY LTD.

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 10350 of 2003

MR BS PATEL for Petitioner No. 1-2

MRS RANJAN B PATEL for Petitioner No. 1-2

MR RN SHAH FOR MR MUKESH R SHAH

for Respondent Nos.2 to 6.

MR SIRAJ GORI, AGP. for Respondent No.1.

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CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 23/07/2003

ORAL JUDGEMENT

1 This petition has been brought before the Court by the petitioners against the observations made by respondent no.1 - Revisional Authority while passing the impugned order dated 3/7/2003. It appears that respondent nos. 2 to 6 went in revision before respondent no.1 - Authority challenging the order of Collector, Surat in RTS/Appeal/64/2001 dated 16.10.2002/22.10.2002 whereby the order of Deputy Collector, Choryasi in RTS Appeal No.30/2000 dated 01/04/2001 was confirmed. Respondent Nos. 7 to 13 were respondent nos. 1 to 7 respectively before the revisional authority and the petitioners were respondent nos. 8 and 9 before the revisional authority. After hearing the parties the revisional authority vide para 13 of the impugned order dated 3/7/2003 issued the following directions :

"13 As a result, the revision application succeeds and the orders of Collector and Deputy Collector are set aside and entry No.1050 is restored. If any fresh entry has been effected in revenue records pursuant to Deputy Collector's order, the same shall be cancelled."

2 The grievance of the petiioners is that the petiioners had not been given any opportunity of hearing in relation to subsequent sentence in para 13 which reads as under :

"13 xxx xxx xxx If any fresh entry has been effected in revenue records pursuant to Deputy Collector's order, the same shall be cancelled".

3 Heard Mr.B.S.Patel, learned Advocate for the petitioners.

Rule.

Mr.R.N.Shah, learned Advocate appears and waives service of Rule on behalf of respondent nos. 2 to 6 and Mr.Siraj Gori, learned AGP. appears and waives service of Rule on behalf of Respondent No.1. At this stage Mr.B.S.Patel submits that as no relief is sought against respondent nos. 7 to 13 permission may be granted to delete the said respondents. Permission granted. By consent of the learned Advocates appearing for the respective parties the matter is taken up for final hearing and disposal today.

4 Upon hearing the learned Advocate appearing on behalf of the petitioners and respondent nos. 2 to 6 it transpires that it is common ground between the parties that sentence whereby the revisional authority has directed cancellation of any fresh entry effected in revenue records pursuant to Deputy Collector's order has been incorporated in the impugned order without hearing any side appearing before the revisional authority. In these circumstances, it would be just and fair to quash and set aside the said sentence viz " If any fresh entry has been effected in revenue records pursuant to Deputy Collector's order, the same shall be cancelled." as the said observation has been made by the revisional authority without affording any opportunity of being heard to either side.

5 In the facts and circumstances of the case, the aforesaid sentence in para 13 is quashed and set aside and the matter is restored to the revisional authority only in relation to this sentence which observes cancellation of any fresh entry effected in revenue record pursuant to Deputy Collector's order. It is hereby clarified that otherwise rest of the order passed by the revisional authority remains as it is without any modification.

6 The revisional authority, if found necessary, to make any such observation, may grant opportunity to all the parties. If the revisional authority feels that it is not necessary to make any such observation it is not necessary to call the parties in this regard.

7 In the circumstances, the petition is allowed qua the sentence which reads as under :

> "If any fresh entry has been effected in revenue records pursuant to Deputy Collector's order, the same shall be cancelled."

and the said sentence in the impugned order stands quashed and set aside. Rule made absolute. There shall be no order as to costs. Direct service permitted.

(D.A.Mehta, J)

m.m.bhatt